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IN THE SUPREME COURT OF THE
STATE OF UTAH

KENT L. MAXWELL,

Plaintiff-Appellant,

-vs-

HONORABLE ROBERT G. GIBSON,
Judge of the Salt Lake City
Court of Salt Lake County,
State of Utah,

Defendant-Respondent.

Case No.
15284

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT OF THE THIRD
JUDICIAL DISTRICT COURT, IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH, THE
HONORABLE PETER F. LEARY, JUDGE

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IN THE SUPREME COURT OF THE
STATE OF UTAH

KENT L. MAXWELL,

Plaintiff-Appellant,

-vs-

HONORABLE ROBERT G. GIBSON,
Judge of the Salt Lake City
Court of Salt Lake County,
State of Utah,

Defendant-Respondent.

Case No.
15284

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

Plaintiff filed a petition in the Third Judicial District Court asking that a guilty plea entered in the Salt Lake City Court to the crime of driving while intoxicated, Utah Code Ann. § 41-6-44 (1953), as amended, be vacated.

DISPOSITION IN LOWER COURT

The Honorable Peter F. Leary denied the petition on May 24, 1977.

RELIEF SOUGHT ON APPEAL

Respondent seeks an order of this Court affirming the judgment rendered below.

STATEMENT OF FACTS

Plaintiff entered a plea of guilty to the crime driving while intoxicated, Utah Code Ann. § 41-6-44 (1953) in Salt Lake City Court. The respondent judge sentenced the plaintiff for that crime on August 4, 1975 (R.2,10). appeal was taken from that judgment and sentence.

On March 15, 1977, plaintiff submitted a petition to the Third District Court wherein he asked that the plea of guilty be set aside, that a \$200 fine paid be refunded, that plaintiff's arrest record be expunged. The ground stated for the petition was that plaintiff was arrested by a University of Utah police officer outside of his jurisdiction (R.2-3).

An answer was filed which denied the existence of any grounds which would provide relief by extraordinary writ and further asserted that plaintiff was improperly using the petition as a substitute for appeal. The answer also averred that the arrest was lawful because the offense was committed in the officer's presence, and that the return of the fine was prohibited by the Limitation of Action provision of Utah Code Ann. § 78-12-30 (1953), as amended (R.10-12).

Counsel stipulated that the facts of the arrest were as contained in a police record (R.6,7). That police report has not been made a part of the original record on

appeal in this case. After hearing argument, the court below ruled that plaintiff's plea of guilty waived any objection that the sentencing court lacked jurisdiction over the plaintiff's person and denied the petition (R.9).

This case is on appeal from that judgment.

ARGUMENT

POINT I

THE COURT BELOW PROPERLY DENIED THE PETITION BECAUSE AN ILLEGAL ARREST DOES NOT DEPRIVE A COURT OF SUBJECT MATTER JURISDICTION.

Respondent agrees with the plaintiff that "a guilty plea waives all defenses except those which are jurisdictional in nature." (Brief of Appellant, p.2.) Assuming that the facts in the police report would support plaintiff's contention that his arrest was illegal, plaintiff would still not be entitled to relief unless that illegal arrest denied the Salt Lake City Court jurisdiction to hear the case.

Plaintiff relies on Blackledge v. Perry, 417 U.S. 21 (1975). Respondent submits that the Blackledge case demonstrates that this appeal is without merit. In Blackledge, a prisoner was charged and convicted of a misdemeanor in a district court. The prisoner sought

an appeal to the county superior court in the form of a trial de novo. The prosecutor then succeeded in obtaining a felony indictment against the prisoner based on the same facts that supported the misdemeanor conviction. The prisoner pleaded guilty to the felony charge. Subsequently the prisoner sought habeas corpus relief in the federal courts, and the United States Supreme Court held that the prisoner's plea of guilty did not waive his due process objections to the initiation of the felony proceedings. The court reasoned that the felony indictment in and of itself denied the prisoner's rights by impermissibly burdening his constitutionally protected right of appeal.

The court carefully distinguished those cases where the proceedings themselves deny due process, and those claims of "antecedent constitutional violations." The Court stated:

" . . . when a criminal defendant enters a guilty plea, 'he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.'" 417 U.S. at 29, 30. (Emphasis added.)

In this case, it is clear that the city court has jurisdiction over offenses such as those committed by the plaintiff. Utah Code Ann. §§ 78-4-16 and 78-5-4 (1953), as amended. Assuming that plaintiff was improperly arrested

officers having the requisite authority could have rearrested the plaintiff and legally compelled him to face the charge in the city court. Under this circumstance, an illegal arrest must be viewed as an "antecedent constitutional violation" and not going to the "very power of the State to bring the defendant into court to answer the charge brought against him." 417 U.S. at 30. Under the Blackledge analysis, therefore, plaintiff is foreclosed from complaining of an illegal arrest after a plea of guilty. A number of cases support this view.

In Frisbie v. Collins, 342 U.S. 519 (1952), the Court stated:

"... the power of a court to try a person for crime is not impaired by the fact that he is brought within the court's jurisdiction by reason of a 'forcible abduction.'" 342 U.S. at 522.

The facts in Frisbie were more aggravated than in the present case, because there officers of the law crossed state boundaries and seized the petitioner in violation of the Federal Kidnapping Act. The Frisbie rule that an illegal arrest does not deprive a court of jurisdiction accords with the law of this State.

In Washington v. Renouf, 5 Utah 2d 185, 299 P.2d 620 (1956), this Court held that the illegality of an

extradition procedure affords no grounds for habeas corpus relief. The Court stated:

" . . . no U.S. Constitutional provisions are violated by illegal, improper, or unlawful means of obtaining jurisdiction over the person of the accused where he is held under proper process." 5 Utah 2d at 186.

Virtually every American jurisdiction follows the rule that an illegal arrest does not deprive the court of jurisdiction. See 96 A.L.R. at 977, where it states:

"Where a defendant is physically before the court upon a complaint or indictment, either because he is held in custody after an arrest or because he has appeared in person after giving bail the invalidity of the original arrest is immaterial, even though reasonably raised, as regards the jurisdiction of the court to proceed with the case." (Emphasis added.)

CONCLUSION

Assuming that the facts in the police report would support plaintiff's contention that he was illegally arrested, such an illegal arrest did not deprive the Salt Lake City Court of jurisdiction to enter his plea of guilty and to sentence him therefor. A plea of guilty waives all non-jurisdictional errors. Therefore, the District Court properly denied the petition and respondent asks that the

judgment below be affirmed.

Respectfully submitted,

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